

POLICE/SHERIFF'S DEPARTMENT		RULES AND REGULATIONS	
SUBJECT: Employee Benefits		NUMBER: 1-19	
EFFECTIVE DATE: July 1, 1999		REVIEW DATE:	
AMENDS/SUPERSEDES: RR 1-19, January 1988		APPROVED: _____ Chief of Police/Sheriff	
CALEA STANDARDS: 22.2		VLEPSC STANDARDS: PER.03.01-.03.06	

NOTE

This order is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third-party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

INDEX WORDS

Benefits
Fair Labor Standards Act
Family and Medical Leave Act
Holidays
Hours of duty
Injury
Leave
Limited duty
Psychological counseling
Vacation

I. POLICY

The standards by which the department operates can only be achieved if employees are perceived as competent professionals. Maintaining performance standards depends on a fair and equitable working environment in which the conditions of employment are made clear. To this end, this order outlines the conditions of work, particularly the benefits afforded by *[your locality]*. Sick leave and illness or injuries require special comment in view of the costs to both the employee and the department. Whenever an employee becomes injured while on duty, the department shall make every effort to assist the employee in recovering and shall afford the employee an opportunity to continue working in a limited- duty status.

II. PURPOSE

To acquaint employees with the benefits of town/county employment, specifically to describe insurance coverage for an injured employee, and to establish procedures for dealing with on-duty injuries.

III. DEFINITIONS

A. Limited duty

Limited duty is a status applied to an employee by the chief of police/sheriff. This status permits the employee to continue working at his or her current grade while recuperating from illness or injury that is compensable under Worker's Compensation. Women who are pregnant may be designated as working in a limited-duty status. While in this status, employees do not perform all of the tasks that are normally required of them.

IV. PROCEDURES - GENERAL

A. Vacation

All vacation shall be restricted to two weeks per employee from May to September. The remaining time must be taken from September to May. All vacation time must be taken within the town fiscal year, September 1 through August 31. ***[Note: Other localities rely on a July 1-June 30 fiscal year.]*** Employees cannot carry vacation leave balances into the next fiscal year. ***[Note: Some localities allow employees to accumulate vacation time from year to year to a maximum amount, whereas other localities apportion each employee an amount of vacation time that must be used within the fiscal or calendar year.]***

B. Holidays

The county/town recognizes ***[give number]*** of paid holidays per year that may be taken as part of an extended vacation or individual holiday. Due to the small number of department personnel, the chief of police/sheriff shall arrange holiday working schedules to obtain a fair arrangement for all. Refer to the town/county personnel policy.

C. Sick leave

The town/county grants sick leave for illness or injury of sufficient seriousness to prevent the employee's performance of duty; or for required physical, optical, or dental examination or treatment. The illness of a spouse, children, or other immediate family members living in the employee's home or the need to accompany children receiving preventive medical, optical, or dental treatment, may warrant the use of sick leave. The town/county grants ***[enter amount of sick leave granted annually]***. Sick leave balances may accrue from year to year. See town/county personnel policy for more details.

D. Special leave

Special leave may be granted from work to employees for a death in the immediate family or other special circumstance as determined by the chief of police/sheriff. Immediate family includes father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, grandmother, grandfather, or any relative who is domiciled in the employee's household. Death leave is limited to three days. Special leave cannot be earned or accrued. ***[Note: Special leave provisions may be supplanted by the Family and Medical Leave Act. See section VII below on the Family and Medical Leave Act.]***

E. Military and civil leave

1. Employees who are members of the organized reserve forces of the United States armed services, naval militia, or national guard shall be entitled to leaves of absence from their respective duties, without loss of seniority, accrued leave, or efficiency rating, on all days during which they are engaged in federally funded military training duty, or when called forth by the governor pursuant to state law. No loss of pay shall occur during such leaves of absence except that paid leaves of absence for federally funded military training duty shall not exceed 15 work days per federal fiscal year.
2. Employees shall be granted leave for any absence necessary for serving on a jury or attending court as a witness under subpoena.

F. Absent without pay

An unauthorized absence from duty shall be treated as an absence without pay and may be grounds for disciplinary action. Where the conditions warrant and adequate reasons for failure to secure authorization before the absence are found to exist, the absence may be authorized by a later grant of leave.

G. Overtime

Compensatory time may be granted in accordance with town/county policy. Generally, the department does not recognize overtime for pay purposes. When possible, employees shall submit requests for overtime or compensatory time in advance of the time off from work.

NOTE: Very small departments should consult a Wage and Hour Office, U.S. Department of Labor (see telephone numbers below) to determine if they are exempt from both minimum wage and the overtime provisions of the Fair Labor Standards Act (FLSA), 29 United States Code § 201 et seq.. Agencies that employ fewer than five officers within a work week and sheriffs (but possibly not deputies) are exempt from FLSA. Generally, FLSA requires employers to pay overtime at a rate of one and one-half times the employee's regular wage beyond the 40-hour-per-

week threshold. For law-enforcement agencies, though, overtime pay is required on a sliding scale from 43 hours in a seven-day work period to 171 hours in a 28-day work period. Also, law-enforcement officers must be compensated for overtime with compensatory time off at a rate of one and one-half hours for each hour of employment. Note that certain kinds of employees in a law-enforcement agency that must comply with FLSA are exempt from FLSA requirements.]

H. Hours of work

[Note: Describe your department's schedule. Some agencies have duty cycles that extend several weeks before repeating themselves, or require officers to remain at home on call. To ensure compliance with federal law, town managers, sheriffs, and police chiefs should consult the nearest Wage and Hour Office of the U.S. Department of Labor. The Wage and Hour Office treats all inquiries as confidential; callers may even remain anonymous. The regional office locations and telephone numbers are: Richmond 804-771-2995; Roanoke, 540-857-2331; Norfolk, 757-441-3490; Bristol, 304-347-5206 (the Bristol office has closed, the number given is for the Charleston, West Virginia office); Lynchburg, 804-845-6876; Waynesboro, 540-949-6444; Falls Church, 703-285-2575.]

V. **PROCEDURES - INJURIES**

A. General

1. All full-time employees are covered by Worker's Compensation, medical insurance, and accrued sick leave, paid for by the town/county. *[Note: If your agency has part-time, auxiliary, or reserve personnel, determine the applicability of insurance and Worker's Compensation to these personnel and provide appropriate guidance here.]*
2. Employees who are injured while on duty shall at the first opportunity make an oral report of the circumstances to their immediate supervisor, followed by a written report which shall be submitted through the chain of command to the chief of police/sheriff. The supervisor investigates and reports the circumstances surrounding the incident.
3. All initial injury reports shall be completed before the end of the tour of duty, or not later than twenty-four hours after the incident.
4. In the event that the injured employee is not able to make the report, the supervisor shall be responsible for submitting all required reports with all available information.
5. The injured employee shall send or deliver, at the earliest convenient time, any additional medical statements or information concerning when the employee may or will be available for reassignment to limited or full duty. The employee is responsible for keeping the department aware of his or her

medical status through the chain of command. The employee shall communicate his or her medical update no less frequently than monthly.

6. The injured employee, or his supervisor if the employee is unable to speak for himself/herself, shall notify the hospital, doctor, and pharmacy that all expenses related to the on-the-job-injury are to be billed to the town/county insurance carrier for payment under Worker's Compensation.

B. On-the-job injury

1. Employees are covered by Worker's Compensation for any injury sustained while properly performing assigned duties for as long as medically necessary. The town has the right to request at any time a medical re-evaluation of an employee. Injuries include those which occur while attending any authorized school or training program.
2. Any employee who has suffered a job-related injury that is compensable under Worker's Compensation may be eligible for limited-duty status. See VI below.

C. Off-the-job injury/illness

1. Whenever an employee sustains a non-job-related injury or illness that would adversely affect performing any normal assignment, the time the employee may take off from work may be deducted from accrued sick leave.
2. Whenever an employee is absent by using sick leave, the chief of police/sheriff or supervisor may request a medical statement of proof of the degree of the injury or illness, and how long the injury or illness may require the employee to be away from his or her normal assignment.
3. As soon as possible before his or her next tour of duty, the injured or ill employee shall inform the immediate supervisor of the extent of the injury or illness and deliver or send any medical statements certifying when he or she may be expected to return to duty.
4. If an employee is without enough sick leave to cover an absence, vacation time shall be deducted, then compensatory time, and finally leave without pay will be charged.

D. OSHA requirements

Should a full-time employee be killed while on duty, the on-duty supervisor shall notify OSHA (Occupational Safety and Health Administration) in Richmond immediately. If five or more full-time employees are injured in one incident, the on-duty supervisor shall notify OSHA in Richmond. The chief or the supervisor shall

contact the town manager's secretary at the very earliest time to process the death notification or multiple employee injury notification.

E. Psychological counseling

1. When the chief of police/sheriff learns of personnel who are in need of psychological counseling, he or she shall refer them to mental health or other counseling sources.
2. If, in the judgment of the chief of police/sheriff, psychiatric treatment is required in the interests of the employee and the department, the chief/sheriff may require it at departmental expense. Treatment or counseling will be handled with the utmost confidentiality.

VI. LIMITED DUTY

- A. The chief of police/sheriff shall determine the duration and nature of an employee's limited-duty status upon receipt of all documentation concerning the employee's condition.
- B. No employee shall return to full duty from limited-duty status without written approval from an attending physician and the concurrence of the chief of police/sheriff *[and the risk manager or consulting attorney]*.
1. No permanent limited-duty positions exist within the department.
- C. *[Note: Address whether or not employees on limited duty may operate department vehicles.]*
- D. Employees on limited duty shall not perform any off-duty work.

[Note: If your agency has more than 50 employees, you must comply with the Family and Medical Leave Act. If so, this Act supplants the following pregnancy leave section. If your agency has more than 50 employees, adopt the provisions under VII below.]

E. Pregnancy

1. When a pregnancy is sufficiently advanced to where an employee's attending physician determines that continued performance of duties and assignments poses a threat to the employee and her child, the employee shall promptly inform the chief/sheriff of the fact in writing. As soon as the physician concludes that the employee should curtail certain duties, the employee shall so advise her supervisor. The supervisor, in turn, shall notify the chief/sheriff.

2. No employee shall return to full duty following maternity leave without written approval from the attending physician. Post-pregnancy limited duty shall not be permitted: if the employee needs extra leave, annual or sick leave will have to be used.

[Note: Agencies may wish to consult the Pregnancy Discrimination Act, 42 United States Code § 2000e(k) for further details of federal requirements. The law requires that "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. This federal law and the cases it has generated contain a number of issues that agencies need to consider. For example, the courts have held that the Pregnancy Discrimination Act is violated when an employer refuses to hold a job open for an employee on maternity leave when it has protected positions for other temporarily disabled employees. Similarly, the courts have found discrimination when employers deny employees seniority or retirement credit following maternity leave when the employers have extended these measures to other employees.]

VII. FAMILY AND MEDICAL LEAVE ACT (FMLA)

[Note: If departments have any questions about the applicability of FMLA to their circumstances, contact the nearest Wage and Hour Office, U.S. Department of Labor. Also, FMLA requires that employers provide personnel with notification which details the specific expectations and obligations of employees under the law. Agencies may wish to provide a summary of FMLA to each employee.]

A. General

According to FMLA, the department provides up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. To be eligible, employees must have worked at the department for one year (working at least 1,250 hours). *[Note: These stipulations only apply to covered employers, those that employ more than 50 employees. To count as one of the 50, an employee must meet the test stated above. Also, FMLA replaces the provisions for pregnancy leave because FMLA does not require the employee to exhaust all other leave balances for extended leave. Also, under FMLA, fathers as well as mothers are eligible for the unpaid leave.]*

B. Definitions

For FMLA purposes only, the following definitions apply.

1. Child: includes adopted or foster children, step-children, legal wards, and anyone for whom the employee stood *in loco parentis*, or children over 18 if they cannot care for themselves.

2. Parent: biological parents as well as any person who stands or stood *in loco parentis* to the employee when he or she was a child.
3. Spouse: a husband or wife as defined or recognized under state law for purposes of marriage, including common-law marriage.

C. Circumstances in which unpaid leave is available

Employees are eligible for extended unpaid leave under four circumstances:

1. To care for the employee's child after birth, or placement for adoption or foster care.
2. To care for the employee's spouse, son, daughter, or parent, who has a serious health condition.
3. For a serious health condition that makes the employee unable to perform his or her job (i.e., any illness, injury, or other impairment that requires in-patient care in a hospital or other medical facility or continuing treatment by a health care provider. Treatment may be for allergies, stress, and even substance abuse.

D. Procedures

1. Employees who wish to take unpaid FMLA leave must provide 30 days advance notice when the leave becomes foreseeable.
2. The department requires a medical certification to support a request for FMLA leave. The department may request a second or third opinion at the department's expense. The department also requires a medical certification to return to work or assume limited duty. If, after a period of FMLA leave, the employee is unable to return to work, the department shall require a medical certification to that effect.
3. The department may deny FMLA leave if requirements (1) and (2) above are not met.
4. If an employee takes FMLA leave, the department guarantees that
 - a. the employee's group health coverage shall continue during FMLA leave;
 - b. the employee shall be restored to his or her original or equivalent position with equivalent pay and benefits upon return from FMLA leave; and

- c. that the use of FMLA leave shall not result in the loss of any employment benefit that accrued before the start of FMLA leave.

[Note: FMLA makes an exception to these guarantees in the case of "key employees," or those among the highest paid 10% of the department's employees. Contact the Wage and Hour Office, U.S. Department of Labor for information.]

- 5. The department may allow an employee to take intermittent FMLA leave or work a reduced leave schedule to reduce the usual number of hours per day or work week.
- 6. To be eligible for FMLA leave, the employee does not have to use all available vacation or sick leave first.